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Contents

Chairman condemns
assassination of Serb
journalist Curuvija
by C. R. Gore 34

Moscow Court clears
Unification Church
by John Finerty 36

Chairman,
Commissioners
sponsor resolution
on anti-Semitism in
Russian Duma
by John Finerty 36

Russian Duma
deputy addresses,
warns Commission
by John Finerty 37

Macedonian Consti-
tutional Court over-
turns articles of
religion law
*by Karen Lord and
E. M. Campbell 38*

Romanian Greek
Catholics forced to
choose: rite or not?
by M. T. Walsh 39

War Crimes
before the ICTFY
by E.B. Schlager 41

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C. R. Gore 31-37

*left to right,
Harold H. Koh
and
Marc Grossman
testify on
the OSCE
Summit*



Turkey's human rights record assessed in lead-up to Istanbul OSCE Summit

by Ron McNamara

The Commission's ambitious calendar for the 106th Congress was launched with the convening of the first hearing of the year on March 18: "The Road to the OSCE Istanbul Summit and Human Rights in the Republic of Turkey." The hearing took place against the backdrop of the decision of the OSCE Ministerial Council last December to hold the next Summit Meeting of Heads of State or Government in Istanbul, November 18-19. Notwithstanding expressions of concern by a number of Commissioners and others over Ankara's failure to implement a wide range of OSCE human dimension commitments, the United States labored to secure a consensus in support of Turkey's bid to host this prestigious event. "Now that this fateful decision has been taken, I vigorously urge the Department of State to make improved

human rights implementation in Turkey a priority," Commission Chairman Rep. Christopher H. Smith (R-NJ) remarked.

In his opening statement, Mr. Smith noted that one year after a Commission delegation visited Turkey, our conclusion is that there has been no demonstrable improvement in Ankara's human rights practices and that the prospects for much needed systemic reforms are bleak given the unstable political scene that is likely to continue throughout much if not all of 1999. A review of the Department's own human rights indicators for Turkey, he concluded, confirms a lack of meaningful progress on these critical issues: decriminalization of freedom of expression; release of imprisoned parlia-

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*left to right,
Stephen Rickard,
Douglas A. Johnson
and
Neil Hicks
before
the Commission*



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mentarians and journalists; reopening of human rights NGOs; and ending the state of emergency in the southeast. "Imagination, courage, and persistence will be necessary both in Ankara and in Washington if we are to move beyond the unacceptable status quo," Smith observed, before calling for creation of a bilateral human rights mechanism to ensure ongoing engagement with Ankara on human rights.

Commission Co-Chairman Senator Ben Nighthorse Campbell (R-CO), who also serves as Chairman of the Senate Committee on Indian Affairs (whose room was the site of the hearing), pointed out the significance of a prominent sculpture in the room by the Apache artist Alan Howser of a warrior shooting at the stars. If the warrior hits the stars, the Co-Chairman explained, his dreams come true. Senator Campbell expressed the hope of helping the millions of people around the world who are denied basic human rights make their dreams come true. Preoccupied by developments in Kosovo and the likelihood of NATO air strikes, Campbell raised the specter of American troops in the former Yugoslavia might be taken captive by Serbian President Slobodan Milosevic, and voiced concern over the well-being of unarmed monitors deployed by the OSCE as part of the

Kosovo Verification Mission. Turning to Turkey, Campbell urged a balanced approach that maintained the strong relationship with Ankara while addressing human rights concerns.

Commissioner Rep. Benjamin L. Cardin (D-MD), a participant in the Commission's January 1998 delegation that visited Istanbul and Ankara, voiced his frustration over Turkey's failure to institute promised human rights reform. He noted bipartisan opposition to the Istanbul venue, among Commissioners, absent human rights progress and urged the Administration to press Turkey to abide by its OSCE human dimension commitments. Commissioner Reps. Matt Salmon (R-AZ), Michael P. Forbes (R-NY) and James C. Greenwood (R-PA) were also present over the course of the hearing.

In an unprecedented development, the Department of State provided two high-level representatives to address the full spectrum of issues from the U.S. vision for the future of the OSCE to a lengthy litany of longstanding human rights violations in Turkey, an original signatory to the 1975 Helsinki Final Act. Assistant Secretary of State for European Affairs Marc Grossman focused his remarks on policy toward the OSCE,

while Assistant Secretary of State for Democracy, Human Rights and Labor Harold Koh attempted to provide a candid assessment of Turkey's human rights record. Mr. Grossman contributed to the discussion on Turkey, drawing on his years of service as U.S. Ambassador to Ankara.

Outlining the United States' vision for the Euro-Atlantic partnership built around NATO, the European Union and the OSCE, Grossman touched on three main themes: security, prosperity, and democracy. He cited the unique contribution of the OSCE in promoting democracy, human rights and the rule of law. Turning to developments in Turkey, Grossman suggested that "the answer to the vast majority of Turkish problems is more democracy and not less democracy." Responding to criticism over the decision to agree to a summit venue in Turkey, he maintained that hosting the biannual gathering did not represent a reward, but provided an opportunity to highlight questions of human rights in Turkey.

Assistant Secretary Koh, echoing this sentiment, said "We can use the Istanbul summit as a tool, as a way of focusing attention and using sunlight as a disinfectant." Expressing disappointment over half-hearted at-

tempts at human rights reform in Turkey, Koh stressed the need for wholesale, not piecemeal reforms. He identified five specific areas of concern: torture; restrictions on freedom of expression; harassment of NGOs; limits on political participation; and Kurdish issues. "Much of the torture problem can be attributed to a climate of impunity created by the rarity of convictions and the light sentences imposed when convictions do occur," Koh observed.

The travails of individuals—including children—subjected to torture in Turkey were raised repeatedly throughout the hearing. Assistant Secretary Koh cited the case of two-year-old Azat Tokmak, "who was tortured in an effort to make the child's mother confess illustrates how terrible and dehumanizing this practice can be for everyone involved." Stephen Rickard, Direct of the Washington Office of Amnesty International USA, presented a gripping account of abuse against Done Talun, a twelve-year-old girl reportedly tortured and beaten by police in Ankara for five days on suspicion of stealing some bread. "Torture is common, severe, and sophisticated," observed Rickard, who submitted for the hearing record a recently released report on human

rights violations in Turkey, *The Human Rights Record of Turkey's 'Anti-Terror' Police Units*. "There is something Orwellian about calling units that torture and beat children and sexually assault their victims anti-terror police," he suggested. Detailing egregious violations Rickard raised particular concern over prospective U.S. arms sales to Turkey, pointing out the irony that sales of electric shock devices to Ankara are currently unregulated. According to another panelists, the use of electric torture appears to be expanding.

Douglas A. Johnson, Executive Director of the Minnesota-based Center for Victims of Torture, citing a report on torture issued by the Human Rights Foundation of Turkey, noted that there are thirty-seven different forms of torture being practiced in Turkey today. The report concluded: "the systematic character of torture in Turkey is not a result of fault or deficiency, but results from the fact that it is considered as an efficient practice of governance." Johnson, a member of the OSCE panel of experts on torture, voiced particular concern for the plight of medical professionals in Turkey harassed and prosecuted because of their efforts to document instances of torture. Refer-

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ring to the recent cases against Dr. Eda Guven and Dr. Cumhur Akpinar, Johnson asked, "how can Turkey make progress ending torture and human rights violations if it continues to shoot the messenger, targeting the very individuals and organizations that document abuses and heal its victims?" He concluded, "we have to start looking at torture, not as an individual atrocity aimed at this person, but as a way of influencing society over generations, creating societies where people have learned to be apathetic and to be uninvolved."

Neil Hicks, Senior Program Coordinator at the Lawyers Committee for Human Rights, expressed frustration over the lack of progress in implementing substantial human rights reform promised by successive governments in Turkey. A member of numerous missions to Turkey, Hicks suggested a steady worsening of human rights conditions in Turkey, intensified following the detention of the leader of the PKK terrorist organization. A contributing factor in this trend, according to Hicks, was the issuing last October of revised Regulations on Apprehension, Police Custody and Interrogation, which among other changes has led to the cessation of on-site visits to detention centers without prior notice. Violations of international fair trial standards and the organization of State Security Courts were also discussed.

Chairman Smith repeatedly underscored the importance of protecting the defenders of human rights in Turkey. Members of the experts

panel voiced similar concerns citing the attempted assassination of Akin Birdal of the Human Rights Association; the forcible breakup of weekly demonstrations of the Saturday Mothers (relatives of disappeared persons); and the proliferation of purported leaks from the interrogation of PKK leader Ocalan suggesting possible links between human rights advocates and his terrorist organization, contributing to an inflamed environment. Assistant Secretary Koh, who also serves as the State Department representative on the Commission urged members of the NGO community to take full advantage of the opportunities activities surrounding the OSCE Istanbul Summit. The Chairman urged the State Department and the U.S. Mission to the OSCE to closely monitor preparations and modalities for any OSCE meeting to be held in the Republic of Turkey to ensure that arrangements are fully consistent with past practices concerning openness and access to such meetings.

In a related development, the Vienna-based OSCE Permanent Council decided on the day of the hearing that the Review Conference will take place in Vienna from September 20 to October 1 and in Istanbul from November 8 to 10.

NOTE: The Government of Turkey declined an invitation to provide an official participant for the hearing. During the course of the hearing Chairman Smith stressed the standing nature of the invitation. □

Chairman

Following the April 11 assassination of Slavko Curuvija, editor of the Serbian Independent *Daily Telegraph* and the weekly magazine "European," in Belgrade, Commission Chairman Rep. Christopher H. Smith released the following statement included in the *Congressional Record*:

Mr. Speaker, yesterday Serbia lost a courageous citizen—one committed to an open society, to a free press, to reporting the truth. Slavko Curuvija was gunned down in front of his Belgrade apartment on Sunday by two men, dressed in black with black face masks. Branka Prpa, who was with him at the time, said that the murderers were certainly professionals. I extend my deepest condolences to her and to all of Slavko's family and friends.

Slavko Curuvija was editor of the independent Serbian newspaper, *The Daily Telegraph*, as well as the news magazine *The European*. Though he had ties with Serbia's establishment, this last year he sought his own independent course, and became a leading critic of the Milosevic regime.



*Slavko Curuvija
as he testified
before the
Commission
in December*

condemns assassination of Serb journalist Curuvija

by Chadwick R. Gore

Mr. Speaker, last December Slavko Curuvija testified before the Helsinki Commission which I chair. In his testimony, he said:

“I come from a country where there is no rule of law... By making an example out of me, the regime sends a message to all who would oppose it, intimidating and bullying all the independent media in the process... The crackdown on my publications and other media organizations has jeopardized the right to free speech in Serbia. The crackdown on the universities jeopardizes another basic human right, freedom of thought. Belgrade University has been deprived of autonomy, its professors have been sacked for failing to sign loyalty oaths, its students jailed for protesting... After all his other wars, Slobodan Milosevic appears to be preparing to wage war against his own people in Serbia and Montenegro.”

More recently, on March 8, Slavko Curuvija, was sentenced along with two of his journalists to five months in prison by a Belgrade court for “spreading false reports with an intention to endanger public order,”

dictator-speak for telling the truth. The three remained free on appeal. When Milosevic used NATO’s action against his forces as an excuse to eliminate any remaining independent media, Curuvija chose to shut down operations rather than succumb to state censorship. According to today’s [April 12] issue of *The Washington Post*, a pro-regime newspaper accused Curuvija of supporting NATO bombing and said that “people like him” will neither be “forgiven nor forgotten.”

People like Slavko Curuvija, who act upon their rights and freedoms and promote the protection of those rights, have fought for what is best for their country. Their patriotism is expressed in their opposition to a regime which does not want any independent voice, nor criticism. They see that Serbia only has a future if it becomes a democracy.

I ask the people of Serbia, and Serbs in this country and around the world, to think hard about what has just happened. If this Milosevic regime is willing to do this to an independent thinker in Belgrade, a Serb, why is it not possible that this same regime can be responsible for the

genocides in Bosnia and now in Kosovo? Is it worth rallying around Milosevic, who is President of Yugoslavia only through ruthlessly undemocratic means and who brought this upon Serbia? Can’t you see that Milosevic, not Curuvija, wants Serbia to be bombed, because he believes this will enhance his power and somehow justify getting rid of those who advocate freedom? I ask the people of Serbia to take a close look around you. Who has isolated you from a Europe more free and united than ever before? Who has caused your living conditions to be so much less than they had been, or could be? The answer should be clear—Slobodan Milosevic. You must no longer allow his propaganda to succeed in convincing you otherwise.

Mr. Speaker, while we may have differences regarding what the U.S. role should be in stopping the genocide in Kosovo, we should be able to agree on one central point: Slobodan Milosevic is the problem, and he must account for his crimes. In my view, the cold-blooded murder of an independent journalist, Slavko Curuvija, is the latest crime to add to the list. □

Moscow court clears Unification Church

by John Finerty

In a major case concerning a so-called “foreign” religious group, a Moscow city court has rejected a suit by seven parents who had demanded financial compensation from the Unification Church for allegedly having alienated their children from them when the latter joined the church.

Brussels-based “Human Rights Without Frontiers” reports that both the Kuzminsky (a district in southeast Moscow) District Court and the Moscow City Court ruled that the plaintiffs lacked evidence to prove that the Unification Church had caused their children to suffer moral damage. Neither did the court find convincing any evidence of “psychic violence, brainwashing or encoding of the Unification Church’s adult members.”

The plaintiffs in the case are active participants in the Interregional Committee for Salvation From Totalitarian Sects. □

Chairman, Commissioners, sponsor resolution on anti-Semitism in Russian Duma

by John Finerty

On March 23, the House of Representatives unanimously approved a resolution H. Con. Res 37 condemning anti-Semitic statements made by members of the Russian State Duma. The bill was introduced by Commission Chairman Rep. Christopher H. Smith (R-NJ) and seven other Commissioners. Besides condemning such statements, the resolution also commends actions taken by fair-minded members of the Duma to censure the purveyors of anti-Semitism within their ranks. The resolution also commends President Yeltsin and other members of the Russian Government for their forceful rejection of such statements, and reiterates the firm belief in Congress that peace and justice cannot be achieved in the world as long as governments and legislatures promote policies based upon anti-Semitism, racism, and xenophobia.

In his statement accompanying presentation of the resolution, Mr. Smith noted that racism and anti-Semitism have appeared in the American political process, but that the leadership of the two major American political parties consistently rejects racist or anti-Semitic individuals as officeholders or candidates for office. He expressed disappointment that the leadership of the Communist Party in Russia attempted to rationalize, rather than reject, the anti-Semitic statements made by its members.

Cosponsoring the resolution are Reps. Frank R. Wolf (R-VA), Matt Salmon (R-AZ), Steny H. Hoyer (D-MD), Edward J. Markey (D-MA), Benjamin L. Cardin (D-MD), Louise McIntosh Slaughter (D-NY), and John Edward Porter (R-IL).

A similar resolution co-sponsored by Commission Co-Chairman Sen. Ben Nighthorse Campbell (R-CO), Ranking Minority Sen. Frank Lautenberg (D-NJ) and eight other Senators, is pending in the Senate. □



*left to right,
Micah Naftalin,
Steven Mills,
Alexandr Shishlov,
Chairman Smith,
Leonid Stonov,
Judah Schroeder,
and Thomas Jandl
at the briefing.*

Russian Duma deputy addresses, warns Commission

by John Finerty

Russian Duma Deputy Alexandr Shishlov, a member of the Yabloko party from St. Petersburg, addressed a Commission briefing on March 24, with his assessment of the political and human rights situation in Russia. Attending the briefing were Commissioner Reps. Chairman Christopher H. Smith (R-NY), Frank R. Wolf (R-VA), Michael P. Forbes (R-NY), Edward J. Markey (D-MA), and Benjamin L. Cardin (D-MD), and Rep. Neil Abercrombie (D-HI).

In a prepared statement, Shishlov noted that political developments in Russia have been hampered over the past few years by the lack of a political infrastructure, an undeveloped civil society and problems in relations between the central government and the regions. Regarding human rights and rising anti-Semitism and extremism, Shishlov stated that Russia's poor economy has served as a breeding ground for such attitudes: "Poverty is the best soil for Communism, nationalism, and anti-Semitism. . . . We may say that anti-Semitism had been the state policy in Soviet times, when Communists ruled the country, and now it is once again the voice of Communists," he said. More dangerous,

in Shishlov's opinion, has been the lack of strong reaction from governmental bodies. Attempts in the Duma to condemn anti-Semitic statements made by General Makashov, for instance, have been blocked by the Communists in the Duma.

On March 23, the U.S. House of Representatives passed unanimously a resolution condemning anti-Semitic statements made by members of the Russian Duma.

Deputy Shishlov noted the scheduled parliamentary elections in December 1999 and saw them as an indicator of "whether we continue with oligarch rule, or travel the road to democracy." The Russian legislator also expressed concern about the NATO bombing of Kosovo, suggesting that it played into the hands of extremist Russian politicians.

Joining Mr. Shishlov at the briefing were several other speakers involved in human rights issues in Russia: Thomas Jandl of the Bellona Foundation, Judah Schroeder of the Watch Tower Society of Jehovah's Witnesses, Leonid Stonov of the Moscow Human Rights Monitors, Steven Mills of the Sierra Club, and

Micah Naftalin of the Union of Councils for Soviet Jewry. They addressed the Commissioners and the public on such issues as the case of environmental "whistle blower" Alexandr Nikitin and Russia's environmental situation overall; anti-Semitism, political extremism, and the criminalizing of Russian society; and, continuing difficulties for Jehovah's Witnesses and other religious minorities. In this connection, Deputy Shishlov noted that NGOs have become a significant segment of the political landscape in Russia and expressed appreciation for the efforts of NGOs from abroad who assist Russia in human rights efforts. He cautioned, however, that ignorance of Russia has undermined some assistance efforts.

Chairman Smith noted that several Members of the Commission are interested in attending the OSCE Parliamentary Assembly meeting scheduled to take place in St. Petersburg in July. Deputy Shishlov expressed hope that Members would attend and invited them to visit the Yabloko headquarters in St. Petersburg at that time.

□



*The Church of Saint George,
Monastery of Staro Nagoricane
in Kumanovo, Macedonia*

FYROM Constitutional Court overturns articles of religion law

by Karen Lord and Elizabeth M. Campbell

On December 24, 1998 the Constitutional Court of the Former Yugoslav Republic of Macedonia declared unconstitutional six articles of the 1997 Law of Religious Communities and Religious Groups. The court challenge was initiated by four Evangelical churches of Macedonia.

The challenge to the law came from four Evangelical churches led by the Baptist Church in Skopje. The Macedonian Helsinki Committee for Human Rights, which is planning its own legal action to further challenge the law, supported the effort. The Constitutional Court declared unconstitutional:

- Article 3 which prohibited religious activity by non-registered groups. The court found that this impermissibly violated an individual's religious liberty.

- Articles 10 and 11 which required a fifty member minimum for registration of a religious group and obligated all of them to file detailed information about themselves on an application. Here, the court ruled that

this restricted freedom of religion and association since no other civic groups are expected to do the same.

- Articles 13, 14, and 22 in which an official register of legal religious groups was established, groups were granted legal status based on the date that they were entered into the register, and religious groups were required to have government permission for the construction of or acquisition of religious buildings. The court deemed these unconstitutional because they interfered with separation of church and state and restricted religious freedom.

The 1997 law divided religious organizations into "religious *communities*", including the Macedonian Orthodox Church and Islam, and "religious *groups*", which included new or non-traditional groups. The law granted preferential status to religious communities. Although the law allowed citizens to freely establish religious groups, it also imposed severe restrictions on their registration, such as requiring the names and addresses

of fifty members to be listed per group on their application. Those groups not registered were illegal and subject to fines. Access to Macedonia by foreign missionaries and preachers was restricted. Other regulations were added by the government to address issues such as proselytism, collection of money and activities outside of the designated place of worship. Penalties for violations ranged from 30,000 to 100,000 dinars. Although over twenty religious organizations were able to register by the end of 1997, some harassment and other difficulties were reported by Protestant groups.

The Macedonian Helsinki Committee plans a future legal challenge to contest Article 8, which permits only one religious denomination for any particular faith, and Article 19, which requires the Office for the Affairs of Religious Communities and Religious Groups' permission to hold religious events in public places. These articles were not addressed by the December 24 decision of the Constitutional Court. □



*Victoria Palace,
seat of the
Government of Romania*

Romanian Greek Catholics forced to choose: rite or not?

by Maureen T. Walsh

Ancient animosities between the Romanian Byzantine Rite Church, also known as the Greek Catholic Church, and the Romanian Orthodox Church have resurfaced in a modern day dispute over property. In the 17th century, Greek Catholics separated from the Orthodox Church, accepting the pope as their spiritual leader but continuing to use Orthodox-style ritual. In 1948, Romania's communist government banned the Greek Catholic faith and ordered the submersion of the Greek Catholic Church into the Orthodox Church. More than 2,000 churches seized from Greek Catholics were given to Orthodox parishes. The Orthodox Church contends that the 1948 merger of the churches and the Orthodox Church's present refusal to relinquish properties to the Greek Catholics are justified as a redress of a centuries-old injustice. Specifically, in 1698, say the Orthodox, the oppressed Romanian Orthodox serfs of Transylvania joined the Catholic Church under duress when threatened with forced conversion by Hungarian Calvinists.

Despite the communist regimes' attempts to eliminate the Greek Catholic faith, believers took their faith underground for forty years, holding

services in apartments or fields. Today, 300,000 Romanians in the overwhelmingly Orthodox country belong to the Greek Catholic Church. Testifying at a March 25 Helsinki Commission hearing, Bishop John Michael Botean of the Romanian Diocese of Canton, Ohio, noted that the government decree that dismantled the Greek Catholic Church was abrogated in 1989. Nonetheless, of the more than two thousand churches confiscated from the Greek Catholic Church, fewer than fifty have been returned. As a result, the Bishop explained, "the bulk of my coreligionists still worship in the open air in cemeteries, schoolrooms, and public parks."

After Ceausescu's regime met its violent end, the government began contemplating the return to individuals and religious communities of property taken by the previous regime, without compensation. By means of government decrees, the Romanian Government to date has returned some properties to the Jewish community, the minority Polish community, and the German Government. Other communal property returns have been proposed for the Hungarian, Greek, Turk, Bulgarian, Serb and German

minority communities. Notably, however, the government has not ordered the return of property to the Greek Catholic Church. In 1997, the Romanian Senate approved a bill to restitute Greek Catholic properties taken in 1948. The bill was defeated in the Chamber of Deputies, reportedly due to opposition from the Orthodox Church.

The dispute between the Orthodox and Greek Catholic Churches has led to incidents of physical violence as hundreds of people have engaged in fistfights and smashed church icons inside contested churches. In February, the two churches reportedly agreed to share buildings where more than one exists in any given town and Orthodox clerics agreed to cease attempts to restore control over other churches ordered returned to Catholic parishes by court rulings. Orthodox clerics seemed to also use the Greek Catholics' desire for a proposed visit by Pope John Paul II as leverage to insist that a papal visit to Romania could proceed only if the Greek Catholics abandon their claims for disputed properties at the national legislative and judicial levels. The Greek Catholic Church, apparently viewing

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the Pope's visit as worth the sacrifice, accepted this offer. According to Bishop Botean, the Greek Catholic hierarchy's decision to accept the Orthodox Church's offer was a function of their weighing it against the Romanian Government's meager efforts thus far to restitute Greek Catholic property.

Bishop Botean testified further that, following the invitation for the Pope to visit Romania, it became clear that the visit was to be strictly ecumenical and not pastoral. Specifically, Bishop Botean explained, "when Pope John Paul II visits Romania he must stay out of the regions of Transylvania and Moldova—the regions which hold virtually the country's entire Catholic population." Commission Chairman Rep. Christopher H. Smith (R-NJ) noted that, while it is unclear whether the decision to limit the Pope's travel to these regions was a political decision made by the government or an ecclesiastical decision, it would be ironic if, under the watch of President Constantinescu, the Pope—"the man that brings probably the greatest hope and peace and a sense of reconciliation to society wherever he goes"—would in any way be precluded travel rights when, under Nicolae Ceausescu's regime, Billy Graham was permitted to travel throughout Romania.

In a disquietingly similar development, the Rutherford Institute, a non-governmental organization based in Charlottesville, Virginia, has questioned the implementation of a Romanian law adopted in 1995 which states that all buildings under the control of the Romanian Ministry of Educa-

tion—including 1300 confiscated Catholic and Protestant schools—will not be returned to the original owners, but will remain with the Ministry. According to the Rutherford Institute, authorities have granted exemptions from this law solely to the Romanian Orthodox Church, directly discriminating against all other long-established churches in Romania. Furthermore, Rutherford alleges, an episcopal building in the region of Nagyvárad confiscated from the Presbyterian Church in 1962 has not been returned, despite the Church's having repeatedly prevailed in its restitution claims in court.

The treatment afforded to the Greek Catholic Church and other minority churches in Romania raises the question whether the legal and bureaucratic obstacles that minority religious and ethnic communities have faced in the restitution process are masking other reasons for not returning property such as underlying discriminatory treatment of certain minority groups. By returning only limited amounts of communal property to certain religious and ethnic groups, the Romanian Government has invited scrutiny into the fairness of its property restitution policies and its commitment to respect and encourage those norms of religious tolerance embodied in OSCE documents and international law. The Romanian Parliament's adoption of comprehensive, nondiscriminatory laws and procedures for restitution of communally owned property would go far toward resolving these disturbing and lingering concerns. □

War Crimes Prosecutions before the International Criminal Tribunal for the Former Yugoslavia

by Erika B. Schlager

SUMMARY

Total number of publicly indicted persons to date:	84
indictments withdrawn (includes one dead):	-18
	66
indictments deceased (indictment not withdrawn):	-6
	60
indictments acquitted:	-1
Living persons currently under public indictment:	59
indictments out on bail (Simic, due to health):	-1
	58
indictments at large	-31
In custody (includes one, Blaskic, under house arrest):	27
Status of those in custody/out on bail:	
sentenced upon guilty plea (Erdemovic)	1
completed trials (5 sentenced)	5
ongoing trials	11
pending trial	11
Cases under appeal	5

Background

The statute establishing the International Criminal Tribunal for the Former Yugoslavia (hereinafter, the Tribunal) was adopted by the U.N. Security Council in Resolution 827 on May 25, 1993. It establishes an immediate and legally binding obligation for states to cooperate fully with the Tribunal, which sits in The Hague, The Netherlands. This court is the first international tribunal established for the prosecution of war criminals since World War II.

The Tribunal is mandated to prosecute persons responsible for serious violations of international humanitarian law (war crimes, crimes against humanity, and genocide) committed on the territory of the former Yugoslavia since 1991.

The Tribunal may not try suspects in absentia, but it has the au-

thority, under the Tribunal's Rule of Procedure 61, to hold special proceedings (sometimes called "super-indictments") in open court at which evidence against the accused is received. These public proceedings may result in the issuance of an international arrest warrant. Thus far, eight international arrest warrants have been issued.

The Tribunal is an independent body. No entity—neither the government of any of the former Yugoslav states nor any of the various international bodies or individual countries that have engaged in mediating peace negotiations—has the authority to require the Tribunal to recognize any amnesties it might purport to grant. Tribunal officials have stated they would refuse to recognize putative amnesties.

Guilt must be proven beyond a reasonable doubt. The maximum sentence is life imprisonment.

The Tribunal consists of fourteen Judges; an Office of the Prosecutor; and a Registrar, each serving separate and independent functions.

Currently the Judges are: Gabrielle Kirk McDonald (United States), Vice-President Mohamed Shahabuddeen (Guyana), Antonio Cassese (Italy), Claude Jorda (France), Richard George May (United Kingdom), Florence Ndepele Mwachande Mumba (Zambia), Rafael Nieto Navia (Colombia), Fouad Abdel-Moneim Riad (Egypt), Almiro Simoes Rodrigues (Portugal), Lal Chand Vohrah (Malaysia), Tieya Wang (China), David Anthony Hunt (Australia), Mohamed Bennouna (Morocco) and Patrick Lipton

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Robinson (Jamaica). Judge McDonald is the Tribunal's President (i.e., the Chief Justice). There are three trial chambers, each with three judges, and one appeals chamber with five judges. The appeals chamber is shared with the Rwandan War Crimes Tribunal.

Judge Richard Goldstone of South Africa served as the first Chief Prosecutor and as prosecutor for the Rwandan War Crimes Tribunal. He was succeeded on October 1, 1996, by Judge Louise Arbour of Canada. Patricia Viseur-Sellers serves as Legal Advisor for Gender-Related Crimes with the Office of the Prosecutor. The Registrar is Dorothee de Sampayo Garrido-Nijgh of The Netherlands.

As of December 1998, the Tribunal had 625 staff members, 14 seconded personnel and 24 interns from 57 countries.

The U.N. budget for the Tribunal for calendar year 1998 was \$68.83 million. The United States contribution to the Tribunal for 1998 was \$17.6 million.

Kosovo-related developments

In March 1998, the Tribunal's Office of the Prosecutor (OTP) publicly confirmed its jurisdiction over events stemming from the armed conflict in Kosovo. In June 1998, the OTP announced it had commenced an investigation into the Kosovo developments. The OTP has since confirmed it is investigating allegations of both Serb and Kosovo Liberation Army crimes. These investigations are reportedly focusing on people in positions of authority—"the people who made things happen or could prevent them from happening,"—in the words of Tribunal Deputy Prosecutor Graham Blewitt.

In October 1998, after Belgrade repeatedly refused to issue travel visas to investigative teams bound for Kosovo, the OTP issued a statement reasserting the nonnegotiable jurisdiction of the Tribunal over all the territory of the former Yugoslavia. A new trial chamber with three new judges was created in order to handle the expected increase in the caseload due to future Kosovo indictments. On November 17, 1998, the Security Council voted 14-0 (with China abstaining) "call[ing] upon the authorities of the Federal Republic of Yugoslavia, the leaders of the Kosovo Albanian community and all others concerned to cooperate fully with the Prosecutor in the investigation of all possible violations within the jurisdiction of the Tribunal."

In February, Serbian negotiators at Rambouillet reportedly sought to have guarantees of access for Tribunal investigators dropped from the agreement. These reports led Tribunal President Gabrielle Kirk McDonald to protest that, in light of Serbia's demonstrated non-compliance with Tribunal requests and orders, "a generic provision is not sufficient to ensure that the Tribunal will be able to discharge its mandate." This, coupled with the continued willingness of the international community to treat Slobodan Milosovic as a legitimate interlocutor and representative, has contributed to the perception that accountability for war crimes is subject to negotiation.

In March 1998, the United States made a \$400,000 voluntary contribution to the Tribunal to investigate allegations of war crimes in Kosovo. The Tribunal's budget was subsequently increased in light of its expanding work load. American, Brit-

ish and NATO officials have stated they are gathering evidence that will be made available to the Tribunal regarding events in Kosovo.

On April 7, U.S. State Department spokesperson Jamie Rubin noted: "Under international law and Article VII of the statute of the Tribunal for Former Yugoslavia, commanders can be indicted, prosecuted and if found guilty, imprisoned, not only for crimes they themselves commit but also for failing to prevent crimes occurring, or for failure to prosecute those who commit crimes." He went on to identify several individuals who might be held accountable for war crimes in Kosovo: "The United States identifies the following individuals as the most recently known commanders of the following units in Kosovo: Colonel Mandic, Commander of the 252nd Armored Brigade deployed in Central Kosovo; Major General Vladimir Lazarevic, Commander of the Pristina Corps; Colonel Mladen Cirkovic, Commander of the 15th Armored Brigade in Pristina; Colonel Dragan Zivanovic, Commander of the 125th Motorized Brigade in Pec, Mitrovica and Kosovska; Colonel Jelic, Commander of the 243rd Mechanized Brigade, headquartered in Urosevac; Colonel Delic, Commander of the 549th Motorized Brigade in Prizren; Colonel Stefanovic, Commander of the 52nd Mixed Artillery Brigade; Colonel Djosan, Commander of the 52nd Light Air Defense Artillery-Rocket Regiment in Djakovica; and Major Pekovic, Commander of the 52nd Military Police Battalion in Pristina."

When subsequently asked why President Slobodan Milosevic had not been included in this list, Ambassador-at-Large for War Crimes David

Scheffer stated, “we wanted to focus yesterday on the commanders on the ground in Kosovo. We’ve made it very clear that we believe political responsibility for this action in Kosovo reaches all the way to Belgrade. And that includes, of course, President Milosevic.”

Indictments

Thus far, the Tribunal has issued public indictments naming a total of eighty-four people, including seven for genocide and eight for gang rape and enslavement of women. Of those, there are currently fifty-nine indictments against living individuals.

In all, eighteen indictments have been withdrawn. In some cases, indictments were withdrawn in light of new exculpatory evidence. In May 1998, fourteen indictments were dropped because of limited Tribunal resources. In announcing the withdrawal of these fourteen indictments, the Chief Prosecutor underscored the need to balance available resources with the need to prosecute fairly and expeditiously. She also noted her intent to maintain an investigative focus on persons holding higher levels of responsibility, or on those who have been personally responsible for the exceptionally brutal or otherwise extremely serious offenses. She noted that these cases could still be prosecuted at the national level.

Of the eighty-four individuals indicted, seven are dead: Alilovic (indictment withdrawn); Djukic (indictment not withdrawn); Dokmanovic (committed suicide in custody, indictment not withdrawn); Drljaca (killed by the International Stabilization Force (SFOR) while resisting arrest, indictment not withdrawn); Gagovic (killed by SFOR while resisting arrest, indictment not withdrawn);

Kovacevic (died while in custody, indictment not withdrawn); and Miljkovic (shot dead in Serbia, indictment not withdrawn).

The highest ranking political and military figures publicly indicted to date are, respectively, Radovan Karadzic and General Ratko Mladic, both of whom remain at large. Two generals—Tihomir Blaskic and Djordje Djukic—are in custody.

In some instances, the Tribunal issues “sealed” or “secret” indictments, consistent with the practices of many countries (including European countries and the United States). Such indictments are transmitted to responsible authorities without being made public, with a view to increasing the possibility of a successful arrest. During 1998, a number of sealed indictments were made public at the time that SFOR effected somewhat high-profile arrests. It is not possible to know how many additional sealed indictments there are or what persons may be named in those indictments, although when the indictment of Krstic was unsealed on December 2, 1998, there were two additional names on the indictment that were blacked out.

Arrests, Custody, and Releases

A total of twenty-seven indicted suspects are currently in custody or under house arrest in The Hague. One has been released on bail.

Altogether, eleven indictees have been arrested or taken into custody by U.N. authorities (SFOR, UNTAES, and Tribunal investigators) and two other indictees were killed while resisting arrest by SFOR; nine have been taken into custody and surrendered by national authorities; sixteen others surrendered themselves to Tribunal authorities (in some instances, with “assistance” from the Croatian

Government). Of the thirty-five taken into custody, one has been acquitted, three have died, and four have had their indictments withdrawn, and one (Simic) has been released on bail because of health reasons, leaving twenty-seven in custody or, in the case of Blaskic, under house arrest.

On October 30, 1998, President Clinton signed Public Law 105-323, authorizing the Secretary of State to issue awards of up to \$5 million for information leading to the capture of persons indicted by the Tribunal.

Trials and Sentencing

As of April 8, there had been one person sentenced based on his guilty plea (Erdemovic). There have been six completed trials; sentences have been handed down in five of those cases. One case resulted in an acquittal (Delalic); five cases resulted in convictions (Delic, Furendzija, Landzo, Mucic, and Tadic). Appeals by the defense are pending regarding all five convictions. In addition, the prosecution has filed appeals in the cases of Delalic, Delic, and Mucic.

There are nine ongoing trials. Goran Jeselic pled guilty to thirty-one of the thirty-two counts against him. The remaining count, alleging genocide, is currently being tried. Sentencing for the first thirty-one counts will be taken up upon the completion of his trial on the charge of genocide. Twelve other individuals are currently preparing for trial. □

(John Rudy contributed to this article.)

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